# Supreme Court of the United States.

**No. 237 OCTOBER TERM, 1899.**

S. DUFFIELD MITCHELL, Receiver in Bankruptcy of JOSEPH McD. SCOTT, doing business as J. McD. SCOTT & COMPANY, Plaintiff in Error,

vs.

JOHN C. McCLURE and W. REED & COMPANY.

In Error to the District Court of the United States for the Western District of Pennsylvania.

## Statement of the Case.

The plaintiff in error is a citizen of Pennsylvania, and was appointed receiver and trustee in bankruptcy of J. McD. Scott & Co., by the District Court of the United States for the Western District of Pennsylvania. He brought an action of replevin against the defendants, residents of said Western District of Pennsylvania, to recover the possession of personalty stated in the writ to be of the value of $2,500. The United States Marshal executed the writ and delivered the property to the plaintiff. The defendants then obtained a rule to show cause why said writ of replevin should not be abated and restitution of the property be made to the defendant, on the ground that the said court had no jurisdiction to entertain such action. To this rule the plaintiff made answer that he took the property upon the claim that the same had been conveyed by the bankrupt to the defendants without consideration and in

fraud of the Bankruptcy Act, and of the rights of the creditors of said bankrupt, and that no title thereto had passed to said defendants as against the plaintiff by reason of the premises. On argument of said rule and answer, the District Court entered an order that the writ in replevin be abated for the reason that the Bankruptcy act of July 1st, 1898, did not confer upon said court jurisdiction to entertain a plenary action brought by the trustee in bankruptcy to recover property fraudulently transferred by the bankrupt. To this ruling, counsel for plaintiff in error excepted and sued out a writ of error to this court.

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## Assignments of Error.

FIRST. The learned District Court erred in making the following decree:

> "And now, to-wit, February 4th, 1899, the motion to abate the replevin writ in the above stated case, having been argued, the Court upon consideration thereof, orders and directs that the said writ of replevin shall be abated for the reasons set forth in the opinion filed herewith."

SECOND. The learned District Court erred in not dismissing the motion made by the above named defendants to abate the writ of replevin in the above stated case.

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## Argument.

The question raised upon this record is whether the District Court acting as a court of bankruptcy, has jurisdiction to entertain a suit of the trustee in bankruptcy brought to recover property, alleged to have been transferred by the bankrupt in fraud of the bankrupt act, the plaintiff and the defendants being citizens of the Western Judicial District of Pennsylvania.

The defendants aver that the District Court has no jurisdiction of such plenary action, since it is prohibited by section 23 (*b*) of the Bankrupt Act of 1898. The plaintiff maintains that the section has no such effect, and that the most that can be claimed for section 23 (*b*) is, that it takes away from the District Court the power to entertain a suit brought by a trustee in bankruptcy, to enforce a right *coming to him from the bankrupt;* but, as the bankrupt would be estopped by his own act, *he* could not recover in any court property *fraudulently* transferred by himself and the trustee's right to recover, therefore, is under and by virtue of the Bankrupt Act, and the right to sue in the District Court is not prohibited by the 23d (*b*) section of the Act.

We submit the following propositions:

First. That the jurisdiction and powers given to the bankrupt court under the Act of 1898 are as comprehensive as those given by the Acts of 1841 and 1867.

Second. That the decisions under the prior bankruptcy laws held that the District Court, as a court of bankruptcy, had jurisdiction to entertain plenary suits at law or in equity by virtue of the general power "*to collect the assets of the bankrupt estate.*"

Third. The courts even went so far as to hold, under the Act of 1867, that one District Court could enter-

tain such plenary suit brought by an assignee in bankruptcy who was appointed in the bankruptcy proceedings of another District Court.

Fourth. It is necessary for the District Court to exercise such jurisdiction in order to make the bankrupt court a complete and speedy forum for the administration and distribution of the bankrupt's assets; and the proceedings should be wholly within the Federal Courts.

Fifth. The Federal judicial power is co-extensive with the legislative power and Congress cannot compel State courts to litigate bankruptcy controversies.

Sixth. Section 23 (*b*) of the Act of 1898 is intended to apply only to suits in the District Court, brought by the trustee to enforce rights of action, which the bankrupt had prior to the adjudication in bankruptcy, and it has no application to a right of action which accrues to the trustee solely by virtue of the bankrupt act.

Seventh. The arbitration provision (Sec. 26) under the Act of 1898 would be rendered entirely nugatory if the District Court has no "*controversies*" to determine.

Eighth. The cases, relied upon by the lower Court, are not in point, nor do they discuss the question of the jurisdiction of the Bankrupt Court to entertain a plenary suit at law or in equity.

Ninth. Congress cannot constitutionally compel a State Court to entertain jurisdiction in either civil or criminal cases arising under Acts of Congress.

## I.

A proper consideration of this case requires a comparison of the several provisions of the Bankruptcy Acts of 1841, 1867 and 1898, relative to the juisdiction and powers of the District Court of the United States, acting as a court of bankruptcy.

Each of these acts vested in the District Court jurisdiction in bankruptcy proceedings.

*Bump on Bankruptcy* (Ed. '98), 55, 63 and 119.

**Jurisdiction and Powers Under the Act of 1841.**

(A) Sec. 6. "The District Court in every district shall have jurisdiction in all matters and proceedings in bankruptcy, arising under this act; the said jurisdiction to be exercised summarily, in the nature of summary proceedings in equity; and for this purpose the said District Court shall be deemed always open. And the District Judge may adjourn any point or question arising in any case in bankruptcy into the Circuit Court for the district, in his discretion, to be there heard and determined; and for this purpose the Circuit Court of such district shall also be deemed always open.

(B) "And the jurisdiction hereby conferred on the District Court shall extend to all cases and controversies in bankruptcy, arising between the bankrupt and any creditor or creditors who shall claim any debt or demand under the bankruptcy; to all cases and controversies between such creditor or creditors and the assignee of the estate; to all cases and controversies between such assignee and the bankrupt, and to all acts, matters and things to be done under and in virtue of the bankruptcy, until the final distribution and settlement of the estate of the bankrupt, and the close of the proceedings in bankruptcy."

(C) Sec. 8. "That the Circuit Court within and for the district where the decree of bankruptcy is passed shall have concurrent jurisdiction with the District Court of the same

district of all suits at law and in equity which may and shall be brought by any assignee of the bankrupt against any person or persons claiming an adverse interest, or by such person against such assignee, touching any property or rights of property of said bankrupt transferrable to, or vested in, such assignee."

*Bump on Bankruptcy* (Ed. '98) 55 and 57.

(**D**) SEC. 10. "That in order to insure a speedy settlement and close of the proceedings in each case in bankruptcy it shall be the duty of the Court to order and direct a collection of the assets and a reduction of the same to money, and a distribution thereof at as early periods as practicable, consistently with a due regard to the interests of the creditors; and a dividend and distribution of such assets * * * , or so much thereof as can be safely disposed of, consistently with the rights and interests of third persons having adverse claims thereto, shall be made among the creditors * * * as often as once in six months from the time of the decree declaring the bankruptcy; * * * and all proceedings in bankruptcy in each case shall, if practicable, be finally adjusted, settled and brought to a close by the Court within two years after the decree declaring the bankruptcy."

*Bump on Baukruptcy*, (Ed. '98,) page 58,

(**E**) SEC. 3. Substantially provided that the assignee in bankruptcy shall be vested with all the rights, titles, powers and authorities, to sell, manage and dispose of the estate and property of the bankrupt, of every name and nature, and to sue for and defend the same, subject to the order and direction of the Court, as fully as the bankrupt might before his bankruptcy.

*Bump on Bankruptcy*, (Ed. '98) page 52.

(**F**) Sec. 9. "That all sales, transfers and other conveyances of the assignee of the bankrupt's property and

rights of property shall be made at such times and in such manner as shall be ordered and appointed by the court in bankruptcy."

*Bump on Bankruptcy*, (Ed. '98) 57.

(G) Sec. 11. "That the assignee shall have full authority by and under the order and direction of the proper court in bankruptcy to redeem or discharge any mortgage, or other pledge or deposit, or lien upon any property, real or personal, whether payable *in presenti* or at a future day and to tender a due performance of the conditions thereof. And to compound any debts or other claims or securities due or belonging to the estate of the bankrupt."

*Bump on Bankruptcy*, (Ed. '98) 58.

**Jurisdiction and Powers under the Act of 1867.**

Rev. Stat, Sec. 4972, "The jurisdiction conferred upon the district courts as courts of bankruptcy shall extend—

First. To all cases and controversies arising between the bankrupt and any creditor or creditors who shall claim any debt or demand under the bankruptcy.

Second. To the collection of all the assets of the bankrupt.

Third. To the ascertainment and liquidation of the liens and other specific claims thereon.

Fourth. To the adjustment of the various priorities and conflicting interests of all parties.

Fifth. To the marshalling and disposition of the different funds and assets, so as to secure the rights of all parties and due distribution of the assets among all the creditors.

Sixth. To all acts, matters and things to be done under and in virtue of the bankruptcy, until the final distribution and settlement of the estate of the bankrupt, and the close of the proceedings in bankruptcy.

*Bump on Bankruptcy*, (Ed. '98) 119.

Rev. Stat. Sec. 5046 provided substantially as did Sec. 3 of the Act of 1841 (*supra* "E.")

*Bump on Bankruptcy*, (Ed. '98) 394.

Rev. Stat. Sec. 5062*b* provided substantially as did Sec. 9 of the Act of 1841 (*supra* "F.")

*Bump on Bankruptcy*, (Ed. '98,) 449.

Rev. Stat. Sec. 5066 provided substantially as did Sec. 11 of the Act of 1841 (*supra* "G.")

*Bump on Bankruptcy*, (Ed. '98) 454.

Rev. Stat. Sec. 5061 also provided that any controversy arising in the settlement of the bankrupt's estate should be submitted to arbitration in the manner specified.

*Bump on Bankruptcy*, (Ed. '98) 443.

**Jurisdiction and Powers Under the Act of 1898.**

Sec. 2. "That the Courts of Bankruptcy, as hereinbefore defined, * * * * are hereby made Courts of Bankruptcy and are hereby invested, within their respective territorial limits * * * * with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings, in vacation, in chambers and during their respective terms as they are now or may be hereafter held * * * *

(3) Appoint receivers or the marshals upon application * * * * to take charge of the property of bankrupts after the filing of the petition, until it is dismissed or the trustee has qualified * * * *

(5) Authorize the business of the bankrupt to be conducted for a limited period by the receivers or marshals or trustee, if necessary, in the best interests of the estate.

(6) Bring in and substitute additional persons or parties in proceedings, when necessary for the complete determination of a matter in controversy.

(7) Cause the assets of the bankrupts to be collected, reduced to money and distributed, and determine controversies in relation thereto, except, as herein otherwise provided * * * *

(15) Make such orders, issue such process and enter such judgments, in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this act * * * * Nothing in this section contained shall be construed to deprive a court of bankruptcy of any power it would possess were certain specific powers not herein enumerated."

*Bump on Bankruptcy*, (Ed. '98) 118 and 119.

Sec. 70 *a* provides substantially as did sec. 3 of the Act of 1841 (*supra* "E").

*Bump on Bankruptcy*, (Ed. '98) 92.

Sec. 70 *b* provides substantially as did sec. 9 of the Act of 1841 (*supra* "F").

*Bump on Bankruptcy*, (Ed. '98) 93.

Sec. 26 provides as follows:

"*a*. The trustee may, pursuant to the direction of the court, submit to arbitration any controversy arising in the settlement of the estate.

"*b*. Three arbitrators shall be chosen by mutual consent, or one by the trustee, one by the other party to the controversy, and the third by the two so chosen, or if they fail to agree in five days after their appointment the court shall appoint a third arbitrator.

"*c*. The written finding of the arbitrators, or a majority of them, as to the issues presented, may be filed in court and shall have like force and effect as the verdict of a jury."

*Bump on Bankruptcy*, (Ed. '98) 442.

It will be seen, upon comparison of these three bankrupt acts, that the powers and jurisdiction of the District

Court, acting as a Court of Bankruptcy, are as complete and extensive in the Act of 1898 as they were under the Acts of 1841 and 1867.

## II.

It has been ruled under the Act of 1867 that the jurisdiction of the District Court over suits at law and in equity is part of the general scope of power "*to enforce the collection of all the assets of the bankrupt.*"

*Goodall vs. Tuttle*, 7 N. B. R., 193; 10 Fed. Cas. 579.

*Shearman vs. Bingham*, 7 N. B. R., 490; 41 Fed. Cas. 1270.

(decided in an opinion by Mr. Justice Clifford), and cited and followed in

*Lathrop vs. Drake*, 91 U. S., 516.

In *Goodall vs. Tuttle, supra*, Judge Hopkins said of the Act of 1867,

> "The Act confers the power upon the District Courts to collect all the assets of the bankrupt, and to do all other acts necessary to be done in virtue of the bankruptcy. This by implication confers the authority upon the District Courts to entertain jurisdiction of suits in the name of the assignee against third persons, either at law or in equity, for the collection of the debts and the property of the bankrupt, and as such jurisdiction is not expressly limited to the District Courts where the proceedings are pending, and as no reason exists for such limitation, the courts are not warranted in restricting its jurisdiction to such district."

## III.

The question was also mooted under the bankrupt Act of 1867, whether the assignee in bankruptcy, without regard to the citizenship of the parties could maintain a suit for the recovery of assets in a Circuit or District Court of the

United States, in any district other than that in which the decree of bankruptcy was made. This question was decided affirmatively in:

*Shearman vs. Bingham*, 7 N. B. R. 490; 21 Fed. Cas. 1270.

*Lathrop vs. Drake*, 91 U. S. 516.

In the *Shearman* case, Mr. Justice Clifford held that a receiver in bankruptcy could recover in *assumpsit* money alleged to have been paid by the bankrupt to defendant by way of preference, in a District Court other than the court in which the proceedings in bankruptcy were pending and the receiver appointed.

In the *Lathrop* case the Supreme Court, Mr. Justice Bradley delivered the opinion, held that an assignee in bankruptcy, appointed by the District Court of the United States for the Western District of Pennsylvania, in proceedings therein (the bankrupt and his assignée being residents therein) could recover assets in the Circuit Court of the United States for the Eastern District of Pennsylvania, the defendant residing in the Eastern District. Mr. Justice Bradley declared that:

> "The question has been quite fully and satisfactorily discussed by a member of this court in the first circuit in the case of *Shearman vs. Bingham;* * * * * and we concur in the opinion there expressed, that the several District Courts have jurisdiction of suits brought by assignees appointed by other District Courts in cases of bankruptcy."

## IV.

The question of the nature and extent of the jurisdiction of the District Court, acting as a court of bankruptcy, was fully considered and elaborately discussed by Mr. Justice Story in *Ex parte The City Bank of New Orleans, in re Christy, Assignee*, 3 Howard, 293, and this case has been

followed in all the case in which the question of jurisdiction has been considered under the Acts of 1841 and 1867.

A recital of the substantial facts of that case is important.

One Walden executed to the bank valid mortgages, which became a lien upon the real estate described therein.

Subsequently, he instituted suits in the State Court to set aside the mortgages.

The bank then proceeded to foreclose the mortgages in the State Court and secured an order of sale, and at the sale became the purchaser of the real estate.

Walden was then declared a bankrupt, and Christy, the assignee in bankruptcy, then began proceedings against the bank in the District Court (the Court of bankruptcy) to avoid the Sheriff 's deed, and the bank then raised the question of the jurisdiction of the District Court to entertain the said proceedings and presented to the Supreme Court of the United States a motion for a writ of prohibition to be issued to the District Court of the United States. The Supreme Court in holding that the District Court, as a Court of bankruptcy, had jurisdiction to entertain the suit by the assignee to avoid the mortgage and overruling the application for a writ of prohibition, said, in an elaborate opinion by Mr. Justice Storey, at *page 311:*

> "Upon the argument the principal questions which have been discussed are, first, what is the true nature and extent of the jurisdiction of the District Court sitting in bankruptcy? Second, whether if the District Court has exceeded its jurisdiction in the present case, a writ of prohibition lies from this court to that court to stay further proceedings. Each of these questions is of great importance, and the first in an especial manner having given rise to same diversity of opinion in the different circuits, and lying at the foundation of all the proceedings in bankruptcy, is essential to be decided in

order to a safe and just administration of justice under the Bankrupt Act.

"In the first place, then, as to the jurisdiction of the District Court in matters of bankruptcy. Independent of the bankrupt act of 1841, chap. 9, the district courts of the United States possess no equity jurisdiction whatsoever; for the previous legislation of Congress conferred no such authority upon them. Whatever jurisdiction, therefore, they now possess, is wholly derived from that act. * * * *

"The obvious design of the Bankrupt Act of 1841, chap. 9, was to secure a prompt and effectual administration and settlement of the estate of all bankrupts within a limited period. For this purpose it was indispensable that an entire system adequate to that end should be provided by Congress, capable of being worked out through the instrumentality of its own courts, independently of all aid and assistance from any other tribunals over which it could exercise no effectual control."

After reviewing the provisions of the 10th, 3rd, 9th and 11th sections of the Act of 1841, as are set forth in this brief, *supra* "D", "E", "F" and "G", he proceeded, at *page 312*, as follows:

"From this brief review of these enactments it is manifest that the purposes so essential to the just operation of the bankrupt system, could scarcely be accomplished except by clothing the courts of the United States sitting in bankruptcy with the most ample powers and jurisdiction to accomplish them; and it would be a matter of extreme surprise if, when Congress had thus required the end, they should at the same time have withheld the means by which alone it could be successfully reached."

After quoting the 6th section of the said Act, as set forth in this brief, *supra* "A" he proceeded:

> "If the section had stopped here, there could have been no reasonable ground to doubt that it reached all cases where the rights, claims and property of the bankrupt, or those of his assignee are concerned, since they are matters arising under the act, and are necessarily involved in the due administration and settlement of the bankrupt's estate. In this respect the language of the act seems to have been borrowed from the language of the Constitution, in which the judicial power is declared to extend to cases arising under the Constitution, laws or treaties of the United States. But the section does not stop here, but in order to avoid all doubt it goes on to enumerate certain specific classes of cases to which the jurisdiction shall be deemed to extend, not by way of limitation, but in explanation and illustration of the generality of the preceding language."

After quoting the language of the 6th section, as set forth in this brief, *supra* "B," he thus proceeded:

> "This last clause is manifestly added in order to prevent the force of any argument that the specific enumeration of the particular classes of cases ought to be construed as excluding all others not enumerated, upon the known maxim, often incorrectly applied, *expressio unius est exclusio alterius.*"

At *page 320*, he said:

> "Congress did not intend to trust the working of the bankrupt system solely to the State courts of twenty-six States, which were independent of any control by the general government, and were under no obligations to carry the system into effect. The judicial power of the United States is, by the Constitution,

competent to all such purposes; and Congress, by the act, intended to secure the complete administration of the whole system in its own courts, as it constitutionally might do."

Speaking in reference to section 10 (*supra* "D"), he said:

"Construing the language of the 6th section as we construe it, adequate means are given; construing it the other way, and it excludes the jurisdiction, if not of the whole subject, at least of most of the important parts of the system, and they are left solely to the cognizance of the tribunals of twenty-six different States, no one of which is bound by the acts of the others, or is under the control of the national courts. If it be admitted (what cannot well be denied) that the District Court may order a sale of the property of the bankrupt, under this section, how can that sale be made safe to the purchasers, until all claims thereon have been ascertained and adjusted? How can any distribution of the assets be made until all such claims are definitively liquidated? How can the proceedings be brought to a close at all, far less within the two years, unless all parties claiming an interest, adverse or otherwise, can be brought before the Bankrupt Court, to assert and maintain them? Besides, independently of the delays which must necessarily be incident to a resort to State tribunals to adjust the matters and rights affected by or arising in bankruptcy, considering the vast number of cases pending in those courts, in the due administration of their own jurisprudence and laws, there could hardly fail to be a conflict in the decisions, as to the priority and extent of the various claims of the creditors, pursuing their remedies therein in distinct and independent suits, and perhaps, also, in different State tribunals of co-ordinate jurisdiction.

These are but a few of the cases which may be put to show the propriety, nay, the necessity, of the jurisdiction of the District Court to the full extent of reaching all cases arising out of the Bankrupt Act.

"The truth is (as has been already asserted) that in no other way could the bankrupt system be put into operation, without interminable doubts, controversies, embarrassments, and difficulties, or in such a manner as to achieve the true end and design thereof. Its success was dependent upon the national machinery being made adequate to all the exigencies of the act. Prompt and ready action, without heavy charges and expenses, could be safely relied on, when the whole jurisdiction was confided to a single court, in the collection of the assets; in the ascertainment and liquidation of the liens and other specific claims thereon; in adjusting the various priorities and conflicting interests; in marshalling the different funds and assets; in directing the sales at such times and in such a manner as should best subserve to the interests of all concerned; in preventing, by injunction or otherwise, any particular creditor or person, having an adverse interest, from obtaining an unjust and inequitable preference over the general creditors, by an improper use of his rights or his remedies in the State tribunals; and finally, in making a due distribution of the assets, and bringing to a close, within a reasonable time the whole proceedings in bankruptcy. Sound policy, therefore, and a just regard to the public as well as private interests, manifestly dictated to Congress the propriety of vesting in the District Court full and complete jurisdiction over all cases arising, or acts done, or matters involved, in the due administration and final settlement of the bankrupt's estate; and it is accordingly, in our judgment, designedly given by the 6th section of the act. In this view of the matter, the District Court has not exceeded its jurisdiction in en-

tertaining the present suit, but it has full power and authority to proceed to the due adjudication thereof upon its merits."

## V.

Mr. Justice Story, in the case of *Mitchell vs. Manufacturing Co.*, 2 Story, 648, 17 Fed. Cas. 497, said, in respect to the Bankrupt Act of 1841:

"The judicial power has, under the Constitution, always been construed to be co-extensive with the Legislative power, upon the plain ground that the Constitution meant to provide ample means to accomplish its own ends by its own courts. Now, looking to the many objects and purposes of the Bankrupt Act of 1841 (chap. 9), it would seem strange that Congress should not have provided all the necessary and proper means to accomplish all its purposes. It is clear that Congress has no right to require that the State courts shall entertain suits for such objects and purposes. The States, in providing their own judicial tribunals, have a right to limit, control and restrict their judicial functions and jurisdiction according to their own mere pleasure. They may refuse to allow suits to be brought there 'arising under the laws of the United States,' for many just reasons; first, that Congress are bound to provide such tribunals for themselves; second, that the State courts are not subject to the legislation of Congress as to their jurisdiction; thirdly, that it may most materially interfere with the convenience of their own courts, and the rights of their own citizens, and be attended by great expense to the State, as well as great delays in the administration of justice, to allow their courts to be crowded with suits, arising under the laws of the United States; and, fourthly, as in the present case, that it would involve the State courts in almost endless examinations and discussions of the principles

and bearings of the bankrupt law, confessedly a system novel in our jurisprudence, intricate in its details, and involving questions exceedingly complicated and difficult in its practical application. Suppose, upon considerations of this sort, any State Legislature should prohibit its own courts from taking cognizance of any causes arising under the bankrupt act, no one could doubt it was a perfectly constitutional exercise of authority, and not justly to be complained of, as a want of comity or of justice. A due regard of a state to its own rights, and its duties to its own citizens, may require such a course, in order to prevent oppressive delays and obstructions in the actual administration of home justice; and, at all events, might justify it in preferring such claims to those belonging properly to the national jurisdiction. Besides all these considerations, there is one which cannot but be deemed of paramount importance in the administration of a system of bankruptcy, as to its uniformity, promptitude, regularity and efficiency in carrying into effect all its provisions. The Courts, which are to administer such a system, must possess not only jurisdiction at law, but in equity; not only a right to proceed in a formal way, but to act summarily; not only to hold regular terms, but to be always open; not only to be bound to act but to be governed by uniform rules and principles of interpretation and action, at least so far as, as from the diversity of human judgments, such uniformity of rules, principles and pleadings can be looked to in practice. But what can be expected from the nature of state courts, organized upon no uniform system, governed by no uniform jurisprudence, and in their jurisdiction and modes of proceeding, admitting of almost endless diversity of practice and action? So far from any system of bankruptcy being capable of any uniformity of action

throughout the United States, under such circumstances, it would be in no two states, perhaps in no two tribunals of the same state, the same. And if every decision in a state tribunal was to be subject to the appellate jurisdiction of the Supreme Court of the United States, instead of the proceedings in bankruptcy being completed, as the Act of 1841 (chap. 9 sec. 1), manifestly contemplates, within two years from their commencement, a half century might elapse before such a consumation."

The same justice further said:

"Let us look for a moment at some of the provisions of the Act to see, what the courts, sitting in bankruptcy, are required to do. We have already seen, by the 10th section of the Act of 1841, that it is required, 'That all the proceedings in bankruptcy in each case shall, if practicable, be finally adjusted, settled and brought to a close by the Court within two years after the decree declaring the bankruptcy.' How is this to be done unless the Court possesses jurisdiction, co-extensive with all the subject matters in bankruptcy, to adjust and force all claims? How can this be enforced, if the entire jurisdiction to collect debts, and to settle controversies in bankruptcy, belong exclusively to the state courts? What control can the courts of the United States, sitting in bankruptcy, exercise over the state courts to regulate, or to speed their proceedings? Besides, the same section of the Act declares: 'That in order to insure a speedy settlement and close the proceedings in each case of bankruptcy, it shall be the duty of the court to order a direct collection of the assets, and a reduction of the same to money, and a distribution thereof, at as early periods as practicable, consistently with a due regard to the interests of the creditors.' Now, here the end is required of the

Court, and can it reasonably be doubted that the means are also given the Court to accomplish it? Construe the clause in the sixth section of the Act of 1841, where it extends the jurisdiction of the District Courts 'to all acts, matters and things to be done under and in virtue of the bankruptcy, until the final distribution, and close of the proceedings in bankruptcy,' to include the jurisdiction to entertain suits to adjust all adverse claims, and to collect all outstanding debts (as its terms are sufficiently comprehensive to include), and we have exactly such a jurisdiction commensurate to the end. Construe it otherwise, and the Court sitting in bankruptcy is crippled and maimed; and we require it to move onward when it is chained to the earth."

"These are some of the grounds, which satisfy our minds, that Congress did not intend to leave the bankrupt system, for its practical operation, or success, or efficiency, to the good pleasure or discretion of the States, or to their voluntary and gratuitous efforts, to enforce or sustain it. Congress meant to provide a system capable of entire self-execution by the National tribunals, without the assistance or co-operation of the States, if the parties interested should choose to rely upon the National arm. The jurisdiction given to the District Courts is, as we construe it, ample for all such purposes; and we see no reason why the general language, in which it is given, should be restricted so as to defeat a single purpose of the Act."

Judge Amidon in

In *re Woodbury*, 98 Fed. Rep., at page 837,

relied upon the cases of *Ex parte Christy* and *Mitchell vs. Manfg. Co.* (*supra*) for the principle herein contended for and said:

"If not indispensable to a uniform system of bankruptcy throughout the entire country, it would

certainly be highly conducive to such a system that the federal courts should be vested with full jurisdiction, for the purpose of securing the highest degree of uniformity in the interpretation and administration of the law. This has been a controlling consideration in construing all previous bankrupt acts, and was, no doubt, present to the mind of congress in framing the statute of 1898."

The above language is in consonance with the general rule of construction of statutes, which was most clearly stated by Mr. Justice Field in the case of

*Bernier vs. Bernier*, 147 U. S. 242,

as follows:

"It is a general rule, without exception, in construing statutes, that effect must be given to all their provisions, if such a construction is consistent with the general purposes of the Act, and the provisions are not necessarily conflicting. All acts of the legislature should be so construed if practicable, that one section will not destroy or defeat another, but explain and support it. When a provision admits of more than one construction, that one will be adopted which best serves to carry out the purposes of the Act."

## VI.

Under the act of 1898 the provisions relating to the bringing of suits to recover the assets of the bankrupt estate and to the jurisdictions of the courts, are the following:

*Sec. 2, clause 7.* "* * * Cause the estates of bankrupts to be collected, reduced to money and distributed, and determine controversies in relation thereto, except as herein otherwise provided."

The 23rd section has reference exclusively to the courts in which suits may be brought and is as follows, viz:

"*a.* The United States Circuit Courts shall have juris-

diction of all controversies at law and in equity, as distinguished from proceedings in bankruptcy between trustees, as such, and adverse claimants, concerning the property acquired or claimed by the trustee, in the same manner and to the same extent only as though bankruptcy proceedings had not been instituted and such controversies had between the bankrupts and such adverse claimants."

"*b.* Suits by the trustee shall only be brought or prosecuted in the courts where the bankrupt, whose estate is being administered by such trustee, might have brought or prosecuted them if proceedings in bankruptcy had not been instituted, unless by consent of the proposed defendant."

"*c.* The United States Circuit Court shall have concurrent jurisdiction with the courts of bankruptcy, within their respective territorial limits, of the offenses enumerated in this act."

In *Carter vs. Hobbs*, 92 Fed. Rep. 594, the plaintiff, trustee in bankruptcy, filed a bill in the District Court of the United States for the District of Indiana to set aside fraudulent transfers of property, and the defendant filed a demurrer to said bill, alleging that the Court was without jurisdiction in the premises. Judge Baker over-ruled the demurrer and filed a written opinion, in which he declared that a fair considerasion of section 23*b* of the Bankrupt Act of 1898 cannot be regarded as ousting the court sitting in bankruptcy of jurisdiction; the grant of jurisdiction by the 2nd clause, omitting the exception in clause 7, is ample and would be exclusive in collecting and reducing to money and distributing the estate of the bankrupt of whatever nature. Section 23*b* is doubtless intended to be the exception engrafted in section 2, clause 7. The Judge said:

> "Omitting the exception, it is clear that by Section 2 the District Court sitting in bankruptcy would be invested with original and exclusive jurisdiction, unless it gave leave to parties to sue in the courts of

the State, over the collection of all debts and demands due the bankrupt, as well as the entire administration of the bankrupt's estate, and the administration of all controversies relating thereto. It is, however, earnestly contended that clause B of Section 23, with which we are alone concerned, takes from the bankruptcy court and remits to the State courts of the State, jurisdiction over all suits for the collection of debts and demands due the bankrupt, as well as of all suits to set aside fraudulent transfers of every sort, and to recover the property of bankrupts in the wrongful possession of third parties. In short, that the bankruptcy court has no jurisdiction to "cause the estates of bankrupts to be collected" and reduced to its possession. If the bankruptcy court possessed no jurisdiction over these matters, it is shorn of power to accomplish the purpose of its creation; and it is impotent, indeed, if it must rely upon the courts of the State to perform the largest and most important part of the work of administering the Bankruptcy Act. Such, in effect is the ruling in *Burnett vs. Morris Merchantile Co.*, 91 Feb. 365, where it is held that the District Court has no jurisdiction to entertain a suit to set aside conveyances made by the bankrupt in fraud of his creditors. But this broad construction of clause *B* is inadmissable. It of course is to be construed in connection with every part of Section 2, which contains the plenary grant of jurisdiction to the District Court sitting in bankruptcy. It takes out of the plenary grant of jurisdiction that which otherwise would be within it. But such a construction of an exception that makes it plainly repugnant to the body of the Act is not permissable. *The Dollar Savings Bank vs. United States*, 19 Wall. 227. The general rule of law is that an exception only carves some special matter out of the body of the Act; and those who set up such an exception must establish it,

as being within the words as well as the reason therefor. *Ryan vs. Carter*, 93 U. S. 78; *United States vs. Dickson*, 15 Pet. 141. The language of clause *B* must be strictly construed to avoid repugnancy between it and the plenary grant of jurisdiction conferred by Section 2. The application of these settled rules of construction leaves no doubt that the clause of Section 23 under consideration does not divest courts of bankruptcy of jurisdiction over suits brought by the trustee to set aside fraudulent transfers of the bankrupt. The clause in question requires suits which the bankrupt might have brought or prosecuted to be brought in the courts in which the bankrupt must have brought them if bankruptcy had not supervened. It seems to be clear that where the trustee brings a suit to enforce a right of action which never existed in the bankrupt, the District Court has ample jurisdiction to maintain it. The trustee's right of action in such a case is not a derivitive one, growing out of a prior right possessed by the bankrupt, but his right is original, created by law, and in the enforcement of it he represents the creditors, and his suit is in effect the exact equivalent of a creditor's bill to reach property fraudulently transferred. Such a suit could never have been brought or prosecuted by the bankrupt against himself and his fraudulent transferees. No State Court could entertain jurisdiction over such a suit when attempted to be brought or prosecuted by the bankrupt; and no such construction of clause *B* is admissable. When suits which the bankrupt could have brought or prosecuted in the courts of the States are spoken of, evidently real suits upon existing causes of action belonging to the bankrupt are meant, and not suits for the pretended enforcement of causes of action which never existed in favor of the bankrupt. Whether District Courts have jurisdistion over suits to recover debts and demands due and

owing to the bankrupt at the time of the adjudication of bankruptcy, it is not necessary to consider or determine. On this question, however, see *In re Sievers*, 91 Fed. 366."

Judge Amidon:

In *re Woodbury*, 98 Fed. Rep. at page 838, held that subdivision *b* of sec. 23 of the Bankruptcy Act of 1898, relates not to the jurisdiction of the courts but to the venue of suits, and in so holding said:

"Under the Federal statutes in force at the time the Bankrupt Act was passed, a defendant, with certain exceptions, not now important, could not be sued in a district of which he was not an inhabitant; and, in case the district was divided into divisions, he could not be sued except in the division of which he was a resident. The object of subdivision "*b*" was to apply this restriction specifically to suits brought by trustees under the Bankruptcy Act. But that Act furnishes still more direct cause for the limitation. Under section 45, the trustee need not be a resident or citizen of the district in which the proceeding is pending; he need only maintain an office in the district. It would frequently occur that a majority of the creditors, especially in the case of insolvent merchants, would be residents of a district other than that of the bankrupt. Take, for example, the States of Wisconsin, Iowa, Indiana and Michigan. It might easily happen that a majority of the creditors of a bankrupt in either of these States would consist of wholesale dealers at Chicago; and such creditors might naturally prefer to place a trustee from their own community, with whom they were personally acquainted, in control of the bankrupt estate. If this should occur it would be possible for the trustee to sue any debtor of the estate from either of the States named in the District of Illinois, if he should be found there; for it

is well established that, when one sues in a representative capacity, it is his own, and not the residence or citizenship of the person represented, that fixes the venue and jurisdiction of Federal Courts. *Coal Co. vs. Blatchford*, 11 Wall. 172. It was this possible hardship that Congress had in mind when it adopted the language contained in subdivision '*b*.' But these statutes forbidding the suing of a defendant in a district of which he is not an inhabitant, or a division of which he is not a resident, create only a personal privilege, which the defendant may waive, and which he does waive unless he makes timely objection. *Improvement Co. vs. Gibney*, 160 U. S. 217. It was to give force to this rule that the last phrase of subdivision '*b*' was employed—'unless by consent of the proposed defendant.' In the light of these considerations, the words in subdivision '*b*', 'in the courts where,' should be given their most obvious sense, as relating to venue, and not be construed as meaning 'in the courts which would possess jurisdiction.' Giving to subdivision '*b*' this construction brings all the provisions of the Bankruptcy Act on the subject into harmony, and also harmonizes the Act of 1898 with previous statutes of the same character, as they have been interpreted by the highest Federal courts."

In *Pepperdine vs. Headley*, 98 Fed. Rep., 863, Judge Phillips held that the District Court of the United States, as a court of bankruptcy, has jurisdiction of a bill in equity by a trustee in bankruptcy against the bankrupt, and a third person to set aside a conveyance made by the bankrupt to his co-defendant on the ground of its being fraudulent as to creditors, although the parties are all citizens of the same State.

In *Louisville Trust Co. vs. Marx*, 98 Fed. Rep., 456, Judge Evans, after a full review of all the cases decided under the Bankrupt Act of 1898, held that the District Court of the United States, as a court of bankruptcy, has jurisdiction of a bill in equity by a trustee in bankruptcy to set aside an alleged fraudulent preference made by the bankrupt; and that Section 23*b* of said bankruptcy act, is a limitation upon the jurisdiction of the Circuit Courts of the United States, and does not affect the jurisdiction of the District Courts, as a court of bankruptcy, conferred by Section 2 of said act.

To the same effect is an opinion by Judge Baker, in *Shutts vs. Bank*, 98 Fed. Rep., 705.

Judge Hawley, in the case of *Norcross vs. Nathan*, 99 Fed. Rep., 415, after a most exhaustive examination of the cases upon the subject, decided precisely as did Judge Phillips in the case of *Pepperdine vs. Headley, supra.*

In *Murry vs. Beal*, 97 Fed. Rep., 567, Judge Marshal held that Section 23*b* of the Bankrupt Act of 1898 is to be strictly construed as being a limitation upon the general grant of jurisdiction to the courts of bankruptcy in other parts of the act; but this provision applies only to suits upon causes of action originally vested in the bankrupt, and which he might have maintained had there been no adjudication in bankruptcy and not suits upon causes of action created by the bankruptcy proceedings, or vested originally in the trustee as trustee: of the latter, the courts of bankruptcy have jurisdiction.

A contrary decision to the above current of authority is the case of *Perkins vs. McKunley*, 98 Fed. Rep., 286.

## VII.

What is the import of sec. 26 of the Act in relation to arbitration of "any controversy"? The trustee may submit to arbitration; the number of arbitrators and their mode of selection are designated; and the conclusive effect of their finding is set forth.

This is an arbitration law, unknown to Pennsylvania practice, incapable of enforcement in the state courts and applicable only to the District Courts. Yet if the court below is right in his construction of the law, there never will be "any controversy" in the District Court, which can be subject to arbitration.

The lower court declares that the construction of section 23*b*, contended for by plaintiff in error, is sufficiently answered by saying, "that such a defense goes to defeat the action and not to affect jurisdiction." (Record 8.)

But there is a material difference in pleading between an action brought by a trustee in bankruptcy to recover the value of goods honestly sold by the bankrupt and another brought by him to recover the value of goods transferred in fraud of the Bankrupt Act.

In the latter, the declaration must aver insolvency of the bankrupt; knowledge of such insolvency on the part of the defendant; transfer of the property within four months of the filing of the petition in bankruptcy, &c., &c.

*Bump on Bankruptcy* (Ed. '98) 786.

The allegations of the declaration in the last case proposed must disclose the jurisdiction of the District Court. If they are wanting the declaration would be demurrable for want of jurisdiction; and the objection could be urged at the inception of the suit.

No declaration has been filed in the case at bar, but the substance necessary to give the District Court jurisdiction of the suit was set forth in plaintiff's answer to the rule to abate the writ. (Record 4).

## VIII.

The cases of

*Morgan vs. Thornhill*, 11 Wall. 75;
*Smith vs. Mason*, 14 Wall. 430; and
*Marshall vs. Knox*, 16 Wall. 556;

relied upon by the lower court as authority for this case (Record 5 and 6), certainly do not have the decisive force claimed for them.

Sec. 2 of the bankrupt act of 1867 provided (*a*) that the circuit courts "shall have a general superintendence and jurisdiction of all cases and questions arising under this act; and * * * may, upon bill, petition, or other proper process * * * hear and determine the case as a court of equity."

A subsequent clause of the same section declared that (*b*) "said circuit courts shall also have *concurrent jurisdiction* with the district courts of the same district, of all suits at law, or in equity * * * by the assignee in bankruptcy against any person claiming an adverse interest, or by such person against such assignee, touching any property or rights of property of said bankrupt transferable to or vested in such assignee."

It is respectfully argued that the lower court is in error in saying that in the above case of *Morgan vs. Thornhill* "it was held that the district court's jurisdiction in a plenary suit was based not on the provision extending jurisdiction 'to the collection of all he assets of the bankrupt,' but to the clause above quoted." (*i. e.* to clause above designated as "*b*.") (Record 5).

In none of those cases was the jurisdiction of the district court mooted, and in none of them was the effect of the clause designated as (*b*) ascribed to it relative to the jurisdiction of the District Court, acting as a court of bankruptcy.

In *Morgan vs. Thornhill, supra*, the District Court had made an adjudication of bankruptcy and granted an injunction in the premises. A petition to review these orders was made to the Circuit Court, under Section 2 of the bankrupt act, and, after hearing, the orders were affirmed. An appeal was then taken to the Supreme Court.

All that this court ruled was that it had no jurisdiction to revise the decree of the Circuit Court, which was merely interlocutory in its nature, and subject to revision at the final hearing.

In *Smith vs. Mason, supra*, this court held that a stranger to the bankruptcy proceeding, claiming absolutely the fund in dispute, not served with process, who has not voluntarily appeared as a party to such litigation, cannot be brought into court upon a rule to show cause.

The assignee in bankruptcy could only proceed against such a party by a plenary suit at law or in equity, as provided in the third clause of the 2nd section of the Bankrupt Act of 1867.

In *Marshal vs. Knox, supra*, the same point was ruled as was decided in *Smith vs. Mason.*

Judge Amidon:

In *re Woodbury*, 98 Fed. Rep., at page 835.

when speaking of Judge Buffington's opinion in the case at bar, says that:

> "The error * * * consists in deriving the jurisdiction of the District Courts from the third clause of section 2 of the bankrupt act of 1867. The federal courts, in construing the act of 1867, uniformly held that full common law and equity jurisdiction was vested in the district courts by section 1 of that act, instead of that part of section 2 which gives to circuit courts concurrent jurisdiction."

## IX.

There is another fatal objection to the construction contended for by the lower court in this case, viz:

Under the constitution and the law, Congress cannot compel State courts to assume jurisdiction of the trial of suits necessary to a collection of the assets of the bankrupt estate.

Under the acts of 1841 and 1867, it was ruled by the Federal Courts that the jurisdiction of the Federal and State courts to entertain such suits was concurrent; neither was exclusive of the other in any class of cases.

But the Supreme Courts of Michigan and Wisconsin held otherwise and the cases of

*Voorheis vs. Frisbie*, 25 Mich. 476;
*Brigham vs. Claflin*, 31 Wis. 607;

squarely ruled that the courts of those States had no jurisdiction to assist in the settlement of bankrupt estates by entertaining proceeding brought by assignees in bankruptcy to recover the assets and property of the bankrupt estates.

It is true that these decisions were regarded by this court as being against the preponderance of authority.

*Claflin vs. Houseman*, 93 U. S. 130.

But where is the authority to reverse the above decisions of the Supreme Court of Michigan and Wisconsin?

The law upon this branch of the question is abundantly fortified by authority.

> "The doctrine seems to be admitted that Congress cannot compel a State Court to entertain jurisdiction in any case. It only permits State Courts, which are competent for the purpose, and have an inherent jurisdiction adequate to the case, to entertain suits in the given cases; but they do not become inferior courts in the sense of the Constitution, because they are not or-

dained by Congress. The state courts are left to infer their own duty from their own state authority and organization; but if they do voluntarily entertain jurisdiction of cases cognizable under the authority of the United States, they assume it upon the condition that the appellate jurisdiction of the Federal Courts shall apply." *1st Kent's Com.*, 403.

To the same effect is,

*Story on Constitution*, U. S., Sec. 1755.

Mr. Justice Clifford gave a full exposition of the law in the case of

*Sherman vs. Bingham*, 7 N. B. R. 490,

as follows:

* * * * Beyond all doubt Congress in enacting the bankrupt law intended to make it uniform throughout the United States, intended to create or designate tribunals and officers to execute all its provisions; but it is clear that if the supposed defect of jurisdiction exists in the District Courts, that the Act neither creates or designates which is subject to exercise any such jurisdiction. Suppose it to be conceded that such a suit may be prosecuted in the State court, the concession will not give any support to the theory of the defendant, as it is well settled constitutional law that Congress cannot compel a State court to entertain jurisdiction under any act of Congress in any case; that it is optional with them, in all cases, whether to entertain any such jurisdiction or not; that they are left to consult their own duty from their own State authority, and some courts have held that Congress cannot confer any jurisdiction upon the State courts in a matter within the exclusive jurisdiction of the Federal government.

*Martin vs. Hunter*, 1 Wheat. 330.

"Criminal jurisdiction cannot be conferred upon State courts by an Act of Congress, and it seems to be everywhere admitted, that they are not bound to exercise jurisdiction even in civil cases, and that they may decline to do either if they see fit, or if the laws of the State forbid it.

*Stern vs. U. S.*, 2 Paine (C. C.) 300;
*Houston vs. Moore*, 5 Wheat. 27."

Upon this branch of our argument, we are upheld by the following language of Judge Amidon

In *re Woodbury*, 98 Fed. Rep., at page 837,

wherein he discusses the power of Congress to entail upon State Courts bankruptcy litigation:

"It would devolve entirely upon State courts the duty of administering the Federal Bankrupt Law, in so far as it relates to the collection of the assets of the bankrupts. This Congress had not the power to do, as had been pointed out by the decisions of the Federal courts in construing the previous bankrupt acts,—a circumstance which furnishes strong reason for believing that Congress did not violate the rule in framing the present statute. While State Courts may exercise a concurrent jurisdiction with Federal Courts in enforcing the rights and duties created by Federal law, it is purely discretionary jurisdiction upon their part, which may at any time be wholly renounced or incumbered with onerous conditions. *Sherman vs. Bingham.*"

We submit, therefore. that the jurisdiction of the Distsict Court, as a court of bankruptcy, in a case like this should be upheld and that the judgment of the lower court should be reversed.

S. Duffield Mitchell,
Thomas Patterson,
*Counsel for Plaintiff in Error.*

Pittsburgh, Pa., April 4, 1900.